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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Corrine Dindinger, *et al.*,

10 Plaintiffs,

11 v.

12 Hartford Life and Accident Ins. Co.,

13 Defendant.

No. CV-22-00508-TUC-EJM

**ORDER**

14 Currently pending before the Court is Plaintiffs’ Motion to Preclude Defendant from  
15 Introducing New Positions Post-Litigation to Defend Its Denial of Coverage (Doc. 32).  
16 Defendant has responded (Doc. 34) and Plaintiffs replied (Doc.37). The motion is ripe for  
17 adjudication.

18 ***A. Background***

19 The facts surrounding Jacob Dindinger murder are generally undisputed. On July  
20 18, 2021, Jacob Dindinger, an Emergency Medical Technician (“EMT”), was shot while  
21 in an ambulance at Quincie Douglas Park on assignment. *See* Administrative Record  
22 (“AR”) at 000078–80.<sup>1</sup>

23 On August 13, 2021, Barbara Owens, a representative of Hartford Life and Accident  
24 Insurance Company (“HLAIC”), e-mailed Jacob’s mother requesting the death certificate  
25 in order to allow her to start the claims process. *Id.* at 000013, 000120. On November 23,  
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27 <sup>1</sup> For citations within the Administrative Record, the Court relies on the Administrative  
28 Record page designations on the lower left of each page, rather than the Case  
Management/Electronic Case Filing (“CM/ECF”) page numbers.

1 2021, a note in the claim file indicates that “this claim did not have a diary set and was  
2 closed in error. no [sic] denial letter was drafted or signed off by the TL.” *Id.* at 000003.  
3 On December 3, 2021, Defendant HLAIC issued a denial letter to Plaintiffs. *Id.* at 000015–  
4 000018. The denial letter noted that HLAIC stated:

5 We have completed our review of your claim for benefits and have  
6 determined that the evidence submitted in support of your claim establishes  
7 that Mr. Dindinger’s loss does not meet the Policy’s requirements under  
8 Hazard H-3 Coverage. Accordingly, Accidental Death benefits are not  
payable under the terms of the Policy. Please allow us to explain.

9 *Id.* at 000015. The letter went on to quote from portions of the Policy, including the  
10 definitions for “injury,” “accident, accidental,” “covered accident,” “covered hazard,” and  
11 “business of the Policyholder.” AR at 000015–000017. The letter also quoted from the  
12 H-3 Rider regarding 24-Hour Accident Protection While On Business Hazard. *Id.* at  
13 000016. The letter further noted that the denial of benefits “was based upon Policy  
14 language and all documents contained in your claims file, viewed as a whole, including the  
15 following specific information[,]” Decedent’s certified death certificate. *Id.* at 000017.  
16 Defendant HLAIC observed that Decedent’s death certificate reported the location of his  
17 injury at work and explained that:

18 The policy states the Business of the Policyholder means while on  
19 assignment by or at the direction of the Policyholder for the purpose of  
20 furthering the business of the Policyholder, but does not include any period  
21 of time while the Insured Person is working at his or her regular place of  
22 employment, during the course of everyday travel to and from work; or  
23 during an authorized leave of absence or vacation. Unfortunately, Mr.  
Dindinger’s loss did not occur under a Covered Hazard as defined in the  
policy. Therefore, Accidental Death Benefits are not payable by the  
Hartford.

24 *Id.*

25 On February 11, 2022, Plaintiffs’ counsel wrote to Defendant HLAIC and requested  
26 “all ‘relevant’ data as defined by the Department of Labor (DOL) regarding ERISA  
27 participant/beneficiary appeals.” *Id.* at 000023. Plaintiffs’ counsel did not receive a  
28 response, and after a written reminder received twenty-four (24) pages, not including the

1 insurance contract or the Business Hazard Rider. Pls.’ Mot. to Preclude (Doc. 32) at 5; AR  
 2 at 000001–000024. On June 24, 2022, Plaintiffs filed a written appeal. AR at 000075–  
 3 000077. On August 8, 2022, Defendant HLAIC denied Plaintiffs’ claim on appeal. *Id.* at  
 4 000064–000068. The denial letter again quoted from part of Policy GTA-101392, the H-  
 5 3 Hazard Rider, and the definitions under the Policy for “accident, accidental,” “covered  
 6 accident,” “covered hazard,” and “business of the Policyholder.” *Id.* at 000065–000066.  
 7 The denial letter also pointed to Jacob’s death certificate. *Id.* at 000066. Defendant HLAIC  
 8 reiterated that “Mr. Dindinger’s accident and loss did not meet the definition of Hazard H-  
 9 3.” *Id.* at 000067.

### 10 ***B. New Arguments Before This Court***

11 Plaintiffs seek to preclude Defendant from basing the denial of their claim on any  
 12 new arguments not relied on during the administrative process. Pls.’ Mot. to Preclude  
 13 (Doc. 32) at 8–10. Specifically, Plaintiffs object to Defendant’s argument regarding  
 14 Jacob’s “regular place of employment” and that he was not on a “trip” at the time he was  
 15 murdered.<sup>2</sup> *See id.* Defendant asserts that it provided adequate notice regarding the reasons  
 16 for their denial, including that Plaintiff was at his regular place of employment and that he  
 17 was not on a “Trip.” Def.’s Response (Doc. 34) at 7–10.

18 “ERISA was enacted to promote the interests of employees and their beneficiaries  
 19 in employee benefit plans and to protect contractually defined benefits.” *Collier v. Lincoln*  
 20 *Life Assurance Co. of Boston*, 53 F.4th 1180, 1185 (9th Cir. 2022) (quoting *Firestone Tire*  
 21 *& Rubber Co. v. Bruch*, 489 U.S. 101, 113 (1989)). It is well established law “that a plan  
 22 administrator undermines ERISA and its implementing regulations when it presents a new  
 23 rationale to the district court that was not presented to the claimant as a specific reason for  
 24 denying benefits during the administrative process.” *Id.* at 1186 (citations omitted). The  
 25 Ninth Circuit Court of Appeals has “expressed disapproval of post hoc arguments advanced  
 26 by a plan administrator for the first time in litigation.” *Id.* (citations omitted). “This rule  
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28 <sup>2</sup> Plaintiffs’ reply focuses on precluding whether the ambulance was Jacob’s “regular place  
 of employment.”

1 allows the claimant to prepare for further administrative review and future litigation,  
 2 prevents the claimant from being ‘sandbagged’ after litigation has commenced, and  
 3 disallows the plan administrator from initiating ‘a new round of review.’” *Id.* (citations  
 4 omitted).

5 Defendant HLAIC’s denial letters provided the definition for “Business of the  
 6 Policy Holder” as follows:

7 **Business of the Policyholder** means while on assignment by or at the  
 8 direction of the Policyholder for the purpose of furthering the business of the  
 Policyholder, but does not include any period of time:

- 9 1) while the Insured Person is working at his or her regular place of
- 10 employment;
- 11 2) during the course of everyday travel to and from work; or
- 12 3) during an authorized leave of absence or vacation.

13 AR at 000017. Defendant asserts that this is sufficient to put Plaintiffs on notice that it was  
 14 denying their claim because Jacob was working at his regular place of employment. Def.’s  
 15 Response (Doc. 34) at 9. Defendant supports this argument with Plaintiffs’ counsel’s  
 16 supposition that this was the reason for the denial. *See* AR at 000102. Defendant’s  
 17 contention is without merit. As an initial matter, an insured working at his or her regular  
 18 place of business is one of three disjunctive exclusions within the definition. Furthermore,  
 19 Plaintiffs’ guessing the reason that they believe Defendant is relying upon does not  
 20 establish that it was actually the reason Defendant denied the claim. Plaintiffs’ counsel  
 21 gave Defendant HLAIC the opportunity to clarify its position, and it declined the invitation.  
 22 Now that the administrative process has ended and litigation begun, Defendant cannot now  
 23 assert this post hoc rationale as a basis for denying Plaintiffs’ claim. *Collier*, 53 F.4th at  
 24 1186.

### 25 ***C. Preclusion of Documents***

26 Plaintiffs also seek to preclude three (3) pages from inclusion in the Administrative  
 27 Record that were not provided prior to the initiation of this litigation. Pls.’ Mot. to Preclude  
 28 (Doc. 32) at 10. Defendant HLAIC has indicated its willingness to withdraw the two (2)

1 pages of claim notes at AR 000122–000123. Def.’s Response (Doc. 34) at 5 n.1.  
2 Therefore, the only document at issue is the H-3 Hazard Rider that was late disclosed. *See*  
3 AR at 000124. The H-3 Hazard Rider was reproduced in Defendant’s denial letter almost  
4 in its entirety.<sup>3</sup> As such, the Court finds that Plaintiffs will not be prejudiced by the  
5 inclusion of this additional page.

6 Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs’ Motion to Preclude  
7 Defendant from Introducing New Positions Post-Litigation to Defend Its Denial of  
8 Coverage (Doc. 32) is **GRANTED in part** and **DENIED in part**.

9 Dated this 5th day of September, 2023.

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12 Eric J. Markovich  
13 United States Magistrate Judge  
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26 <sup>3</sup> The only portion of the H-3 Hazard Rider that was not provided in Defendant’s denial  
27 letters was the “Exclusions” section which states, “This Hazard does not cover injury resulting  
28 from an Accident that occurs while the Insured Person is operating or a Passenger on, boarding,  
or alighting from or by being struck or run down by any Aircraft engaged in an Extra-Hazardous  
Aviation Activity.” AR at 000124.